

FUNDING FOR BURYING UTILITY LINES

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Joel K. Briscoe

Senate Sponsor: _____

LONG TITLE

General Description:

This bill allows a county, city, or town legislative body to impose a local sales and use tax to bury utility lines.

Highlighted Provisions:

This bill:

- ▶ allows a county, city, or town legislative body to impose a sales and use tax;
- ▶ establishes a maximum tax rate for the tax;
- ▶ requires that collections from the sales and use tax be used to bury certain utility lines; and
- ▶ provides for administration and collection procedures.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

ENACTS:

59-12-2301, Utah Code Annotated 1953

59-12-2302, Utah Code Annotated 1953

59-12-2303, Utah Code Annotated 1953

59-12-2304, Utah Code Annotated 1953



59-12-2305, Utah Code Annotated 1953

59-12-2306, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-12-2301** is enacted to read:

Part 23. Underground Utility Line Sales and Use Tax Act

59-12-2301. Title.

This part is known as the "Underground Utility Line Sales and Use Tax Act."

Section 2. Section **59-12-2302** is enacted to read:

59-12-2302. Definitions.

As used in this part:

(1) "Annexation" means an annexation to:

(a) a county under Title 17, Chapter 2, Part 2, County Annexation; or

(b) a city or town under Title 10, Chapter 2, Part 4, Annexation.

(2) "Annexing area" means an area that is annexed into a county, city, or town.

(3) "Utility line" means an electrical transmission line or a telephone transmission line.

Section 3. Section **59-12-2303** is enacted to read:

59-12-2303. Imposition of tax -- Base -- Rate -- Expenditure of revenues collected from the tax -- Administration, collection, and enforcement of tax by commission -- Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.

(1) (a) Subject to the other provisions of this section and except as provided in Subsection (2), a county, city, or town legislative body may impose a sales and use tax of up to .10% on the transactions:

(i) described in Subsection 59-12-103(1); and

(ii) within the county, city, or town.

(b) A county, city, or town legislative body that imposes a tax under Subsection (1)(a) may only expend the revenues collected from the tax to bury utility lines.

(c) For purposes of this Subsection (1), the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.

(d) For purposes of this section, a county legislative body may only impose a tax under this part within the unincorporated area of the county.

59 (2) (a) A county, city, or town legislative body may not impose a tax under this part on:
60 (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses
61 are exempt from taxation under Section 59-12-104; and

62 (ii) except as provided in Subsection (2)(b), amounts paid or charged for food and food
63 ingredients.

64 (b) A county, city, or town legislative body imposing a tax under this part shall impose
65 the tax on amounts paid or charged for food and food ingredients if the food and food
66 ingredients are sold as part of a bundled transaction attributable to food and food ingredients
67 and tangible personal property other than food and food ingredients.

68 (3) To impose a tax under this part, a county, city, or town legislative body shall obtain
69 approval by a majority vote of the members of the county, city, or town legislative body.

70 (4) The commission shall, on a monthly basis, transmit revenues collected within a
71 county, city, or town from a tax under this part to the county, city, or town legislative body by
72 electronic funds transfer.

73 (5) (a) Except as provided in Subsection (5)(b), the commission shall administer,
74 collect, and enforce a tax under this part in accordance with:

75 (i) the same procedures used to administer, collect, and enforce the tax under:

76 (A) Part 1, Tax Collection; or

77 (B) Part 2, Local Sales and Use Tax Act; and

78 (ii) Chapter 1, General Taxation Policies.

79 (b) A tax under this part is not subject to Subsections 59-12-205(2) through (6).

80 (6) (a) The commission may retain an amount of tax collected under this part of not to
81 exceed the lesser of:

82 (i) 1.5%; or

83 (ii) an amount equal to the cost to the commission of administering this part.

84 (b) Any amount the commission retains under Subsection (6)(a) shall be:

85 (i) deposited into the Sales and Use Tax Administrative Fees Account; and

86 (ii) used as provided in Subsection 59-12-206(2).

87 (7) (a) (i) Except as provided in Subsection (7)(b) or (c), if, a county, city, or town
88 enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or
89 change shall take effect:

90 (A) on the first day of a calendar quarter; and

91 (B) after a 90-day period beginning on the date the commission receives notice meeting
92 the requirements of Subsection (7)(a)(ii) from the county, city, or town.

93 (ii) The notice described in Subsection (7)(a)(i)(B) shall state:

94 (A) that the county, city, or town will enact or repeal a tax or change the rate of the tax
95 under this part;

96 (B) the statutory authority for the tax described in Subsection (7)(a)(ii)(A);

97 (C) the effective date of the tax described in Subsection (7)(a)(ii)(A); and

98 (D) if the county, city, or town enacts the tax or changes the rate of the tax described in
99 Subsection (7)(a)(ii)(A), the rate of the tax.

100 (b) (i) If the billing period for a transaction begins before the enactment of the tax or
101 the tax rate increase under Subsection (1), the enactment of a tax or a tax rate increase shall
102 take effect on the first day of the first billing period that begins after the effective date of the
103 enactment of the tax or the tax rate increase.

104 (ii) If the billing period for a transaction begins before the effective date of the repeal
105 of the tax or the tax rate decrease imposed under Subsection (1), the repeal of a tax or a tax rate
106 decrease shall take effect on the first day of the last billing period that began before the
107 effective date of the repeal of the tax or the tax rate decrease.

108 (c) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales
109 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
110 described in Subsection (7)(a)(i) takes effect:

111 (A) on the first day of a calendar quarter; and

112 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
113 rate of the tax under Subsection (7)(a)(i).

114 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
115 commission may by rule define the term "catalogue sale."

116 (d) (i) Except as provided in Subsection (7)(e) or (f), if, for an annexation that occurs
117 on or after July 1, 2011, the annexation will result in the enactment, repeal, or change in the
118 rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take
119 effect:

120 (A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (7)(d)(ii) from the county, city, or town that annexes the annexing area.

(ii) The notice described in Subsection (7)(d)(i)(B) shall state:

(A) that the annexation described in Subsection (7)(d)(i)(B) will result in the enactment, repeal, or change in the rate of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (7)(d)(ii)(A);

(C) the effective date of the tax described in Subsection (7)(d)(ii)(A); and

(D) if the county, city, or town enacts the tax or changes the rate of the tax described in Subsection (7)(d)(ii)(A), the rate of the tax.

(e) (i) If the billing period for a transaction begins before the effective date of the enactment of the tax or a tax rate increase under Subsection (1), the enactment of a tax or a tax rate increase shall take effect on the first day of the first billing period that begins after the effective date of the enactment of the tax or the tax rate increase.

(ii) If the billing period for a transaction begins before the effective date of the repeal of the tax or the tax rate decrease imposed under Subsection (1), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last billing period that began before the effective date of the repeal of the tax or the tax rate decrease.

(f) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax described in Subsection (7)(d)(i) takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the enactment, repeal, or change under Subsection (7)(d)(i).

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

Section 4. Section **59-12-2304** is enacted to read:

59-12-2304. Seller or certified service provider reliance on commission information.

A seller or certified service provider is not liable for failing to collect a tax at a tax rate imposed under this part if the seller's or certified service provider's failure to collect the tax is

as a result of the seller's or certified service provider's reliance on incorrect data provided by the commission in a database created by the commission:

- (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
- (2) indicating the taxability of tangible personal property, a product transferred electronically, or a service.

Section 5. Section **59-12-2305** is enacted to read:

59-12-2305. Certified service provider or model 2 seller reliance on commission certified software.

(1) Except as provided in Subsection (2) and subject to Subsection (4), a certified service provider or model 2 seller is not liable for failing to collect a tax required under this part if:

(a) the certified service provider or model 2 seller relies on software the commission certifies; and

(b) the certified service provider's or model 2 seller's failure to collect a tax required under this part is as a result of the seller's or certified service provider's reliance on incorrect data:

- (i) provided by the commission; or
- (ii) in the software the commission certifies.

(2) The relief from liability described in Subsection (1) does not apply if a certified service provider or model 2 seller incorrectly classifies an item or transaction into a product category the commission certifies.

(3) If the taxability of a product category is incorrectly classified in software the commission certifies, the commission shall:

(a) notify a certified service provider or model 2 seller of the incorrect classification of the taxability of a product category in software the commission certifies; and

(b) state in the notice required by Subsection (3)(a) that the certified service provider or model 2 seller is liable for failing to collect the correct amount of tax under this part on the incorrectly classified product category if the certified service provider or model 2 seller fails to correct the taxability of the item or transaction within 10 days after the day on which the certified service provider or model 2 seller receives the notice.

(4) If a certified service provider or model 2 seller fails to correct the taxability of an

item or transaction within 10 days after the day on which the certified service provider or model 2 seller receives the notice described in Subsection (3), the certified service provider or model 2 seller is liable for failing to collect the correct amount of tax under this part on the item or transaction.

Section 6. Section **59-12-2306** is enacted to read:

59-12-2306. Purchaser relief from liability.

(1) (a) Except as provided in Subsection (1)(b), a purchaser is relieved from a penalty under Section 59-1-401 for failure to pay a tax due under this part or an underpayment if:

(i) the purchaser's seller or certified service provider relies on incorrect data provided by the commission:

(A) on a tax rate;

(B) on a boundary;

(C) on a taxing jurisdiction; or

(D) in the taxability matrix the commission provides in accordance with the agreement;

or

(ii) the purchaser, regardless of whether the purchaser holds a direct payment permit in accordance with Section 59-12-107.1, relies on incorrect data provided by the commission:

(A) on a tax rate;

(B) on a boundary;

(C) on a taxing jurisdiction; or

(D) in the taxability matrix the commission provides in accordance with the agreement.

(b) For purposes of Subsection (1)(a), a purchaser is not relieved from a penalty under Section 59-1-401 for failure to pay a tax due under this part or an underpayment if the purchaser's, the purchaser's seller's, or the purchaser's certified service provider's reliance on incorrect data provided by the commission is as a result of conduct that is:

(i) fraudulent;

(ii) intentional; or

(iii) willful.

(2) In addition to the relief from a penalty described in Subsection (1), a purchaser is not liable for a tax or interest under Section 59-1-402 for failure to pay a tax due under this part or an underpayment if:

214 (a) the purchaser's seller or certified service provider relies on:
215 (i) incorrect data provided by the commission:
216 (A) on a tax rate;
217 (B) on a boundary; or
218 (C) on a taxing jurisdiction; or
219 (ii) an erroneous classification by the commission:
220 (A) in the taxability matrix the commission provides in accordance with the agreement;
221 and
222 (B) with respect to a term in the library of definitions, if that term is listed as taxable or
223 exempt, included in or excluded from "sales price," or included in or excluded from a
224 definition; or
225 (b) the purchaser, regardless of whether the purchaser holds a direct payment permit in
226 accordance with Section 59-12-107.1, relies on:
227 (i) incorrect data provided by the commission:
228 (A) on a tax rate;
229 (B) on a boundary; or
230 (C) on a taxing jurisdiction; or
231 (ii) an erroneous classification by the commission:
232 (A) in the taxability matrix the commission provides in accordance with the agreement;
233 and
234 (B) with respect to a term in the library of definitions, if that term is listed as taxable or
235 exempt, included in or excluded from "sales price," or included in or excluded from a
236 definition.
237 **Section 7. Effective date.**
238 This bill takes effect on July 1, 2011.

Legislative Review Note
as of 2-9-11 2:00 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 286

SHORT TITLE: **Funding for Burying Utility Lines**

SPONSOR: **Briscoe, J.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill could increase local revenue by as much as \$39,900,000 if adopted by all eligible entities.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill could increase the sales tax paid by individuals and businesses by .1 percent in those areas that adopt the tax.